REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

LANDBANK OF THE PHILIPPINES, Petitioner,	**CTA CASE NO. 8684**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, **CASANOVA**, and **COTANGCO-MANALASTAS**, ***JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 2 1 2016 3:30 p.m.

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DECISION

CASTAÑEDA, JR., ***J.***:

This Petition for Review filed by petitioner Land Bank of the Philippines, seeks the nullification of the twenty-five percent (25%) surcharge, interest and penalty in the total amount of One Hundred Seventy-Three Thousand Seven Hundred Eighteen Pesos and Ninety-Six Centavos (₱173,718.96), imposed due to the alleged late payment of expanded withholding tax (EWT) and documentary stamp tax (DST), and also the refund of the said amount paid by petitioner.

THE FACTS

Petitioner Land Bank of the Philippines is a government financing institution created by virtue of Republic Act (RA) No. 3844, as amended, and as such has the capacity to sue and be sued.[1] Its principal office address is at Landbank Plaza, 1598 M. H. del Pilar corner Dr. J. Quintos St., Malate, Manila. Petitioner has a unit known as the Davao Lending Center located at Land Bank of the Philippines, 7 Palm Drive, Bajada, Davao City.[2]

Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees, other charges, and penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code of 1997, as amended (NIRC of 1997, as amended). She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed a civil complaint for collection of sum of money against Business Center Davao Inc. (BCDI), docketed as Civil Case No. 25,951-98 before the Regional Trial Court Branch 17 (Trial Court) of Davao City.[3] The Trial Court rendered a decision in favor of petitioner and was appealed by BCDI before the Court of Appeals; which in turn affirmed the decision of the Trial Court with modifications as to the award of attorney's fees. The Court of Appeals' decision became final and executory for failure of BCDI to appeal to a higher court.[4]

Meanwhile, a writ of execution and a Notice of Sale on Execution of Real Property covering Transfer Certificate of Title (TCT) No. T-234316 were issued, respectively. Being the highest bidder, the corresponding Certificate of Sale was issued in favor of petitioner and the same was annotated on TCT No. 234316 on September 29, 2011. Consequently, the redemption period expired on September 29, 2012.[5]

On October 12, 2012,[6] petitioner paid the corresponding EWT and DST for purposes of consolidating TCT No. T-234316. However, petitioner was likewise assessed to pay surcharges, interests and penalties for alleged late payment of EWT and DST, as follows:[7]

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[1] Par. 1, Joint Stipulation of Facts (JSF), Docket, p. 139.
[2] The Parties, Petition, Docket, p. 8.
[3] Par. 3, JSF, Docket, p. 139.
[4] Par. 4, JSF, Docket, p. 139.
[5] Pars. 5-7, JSF, Docket, p. 140.
[6] Brief Statement of Facts, Annex "F", Docket, p. 35.
[7] Par. 8, JSF, Docket, p. 140.

I.	**Expanded Withholding Tax**	
	Tax Base: 6% of Php 7,317,700.00	Php 439,062.00
	Add: 25% surcharge	109,765.50
	Interest	3,368.15
	Compromise Penalty	6,000.00
	TOTAL	**Php568,195.65**
II.	**Documentary Stamp Tax**	
	Tax Base: Php 7,318,000.00	Php 109,770.00
	Add: 25% surcharge	27,442.50
	Interests	1,142.81
	Compromise Penalty	16,000.00
	TOTAL	**Php154,355.31**

To avoid additional penalties, petitioner paid the above imposition.[8] Thereafter, petitioner sent a letter dated October 30, 2012[9] to the Regional Director of BIR Revenue Region No. 19, Revenue District Office (RDO) No. 113-Davao City, to formally protest the imposition of the subject surcharges, penalties and interests. The same was denied by the said office in a letter[10] dated December 3, 2012 which was received by petitioner on December 18, 2012.[11]

Consequently, petitioner elevated the matter to respondent on January 7, 2013.[12] Due to the purported inaction of respondent, petitioner filed the instant Petition[13] through registered mail on July 31, 2013.

In her Answer, [14] respondent raised the following Special and Affirmative Defenses:

> "6. The foregoing allegations are repleaded and incorporated herein by reference insofar as these are material and applicable.
>
> **A. Respondent undertook her assessment of petitioner for 25% surcharge, interest, and other penalties, in accordance with law, jurisprudence, and administrative rules and regulations;**

[8] Par. 9, JSF, Docket, p. 140.
[9] Annex "D", Petition, docket, pp. 30-32.
[10] Annex "E", Petition, docket, p. 33.
[11] Par. 10, JSF, Docket, p. 140.
[12] See Note 6, Docket, pp. 34-39.
[13] Docket, pp. 8-23.
[14] Docket, pp. 53-61.

> **1. Respondent correctly assessed petitioner upon account of its delay in remitting its expanded withholding tax and documentary stamp tax liabilities for the taxable year 2012; and**
>
> **2. The tenth (10th) day, in the case of creditable withholding tax, or the fifth (5th) day, in the case of documentary stamp tax, following the month's end after the expiry of the redemption period should be reckoned from the original deadline of the redemption period and not from the later date, as adjusted to account for the weekend.**

7. Respondent earnestly maintains that she assessed petitioner for twenty-five percent (25%) surcharge, interest, and other penalties, in the aggregate amount of one hundred seventy-three thousand seven hundred eighteen pesos and ninety six centavos (Php173,718.96), in accordance with law, jurisprudence, and administrative rules and regulations. Respondent adds that she undertook the assessment as a result of petitioner's failure to timely remit its expanded withholding tax and documentary stamp tax liabilities for the taxable year 2012.

8. These taxes, which petitioner failed to remit on time, resulted from the foreclosure sale of the real property covered by Transfer Certificate of Title T-234316, and the subsequent registration and annotation of the certificate of sale thereof on 29 September 2011. Accordingly, the one (1) year redemption period expired on 29 September 2012. As the buyer and the entity upon whom the ownership of the aforementioned real property was consolidated, petitioner had the statutory responsibility to withhold the taxes due from the

proceeds, and then remit the withheld amount within the period provided by law.

9. As indicated by petitioner in its *Petition*, the period within which to file the creditable withholding tax (hereinafter 'CWT') and documentary stamp tax (hereinafter 'DST') returns and remit the pertinent taxes for the same is provided in Section 02 of Revenue Regulations No. 09-2012. Respondent affirms that the remittance of the CWT should be undertaken within ten (10) days, and in similar manner, the DST within five (5) days, following the end of the month after the expiration of the applicable statutory redemption period.

10. In this particular case, the expiration of the applicable statutory redemption period was on 29 September 2012, which incidentally, fell upon a Saturday. Considering that the original expiry date fell upon a weekend, respondent agrees with petitioner, and concedes that the right of redemption could have been exercised until 01 October 2012, which was the workday immediately following it.

11. However, respondent respectfully clarifies that this is only insofar as the exercise of redemption is concerned. Respondent respectfully submits that, with respect to the computation of the period for the remittance of the CWT and DST, the base or reference used should be the original expiry date of 29 September 2012, and not the adjusted date of 01 October 2012.

12. In support of her position, respondent respectfully cites Section 1, Rule 22 of the 1997 Rules of Civil Procedure, which reads as follows:

> 'Section 1. How to compute time. - In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. ***If the***

> ***last day of the period, as thus computed, falls on a Saturday***, a Sunday, or a legal holiday in the place where the court sits, ***the time shall not run until the next working day***'. (emphases and underscoring supplied)

13. The bone of contention between petitioner and respondent in this particular case goes into the computation of the period. Petitioner, in its *Petition for Review,* erroneously claimed that its remittances of the withheld taxes were due on 05 and 10 November 2012. Upon the other hand, respondent respectfully submits that the appropriate construction and application of Section 02 of Revenue Regulations No. 09-2012 vis-à-vis Section 1, Rule 22 of the 1997 Rules of Civil Procedure, only gave petitioner until 05 and 10 October 2012 to timely remit the taxes withheld.

14. The expiry of the redemption period indeed plays an important role in computing both the period within which the property may be redeemed, and also in determining the period for remitting the CWT and DST. However, respondent respectfully submits that it is not in both respects that the said date can be considered as the ***last day of the period*** contemplated under the aforecited provision.

15. To elaborate, respondent earnestly maintains that with respect to the right of redemption, the expiry of the redemption period on 29 September 2012 was considered as the ***last day of the period*** contemplated under Section 1, Rule 22. Therefore, the time did not run until the last working day, which was on 01 October 2012.

16. Upon the other hand, anent the remittance of the taxes withheld, respondent humbly contends that the expiry of the redemption on 29 September 2012 period did not signify the ***last day of the period***. After all, the expiry of the redemption period was merely used as an intermediate reference point from which a further date was computed. As regards the remittance of either the CWT or DST, the last day of the period was not the expiry

of the redemption period, but the tenth (10th) day or the fifth (5th) day, as the case may be, following the moth's end of the expiration of the redemption period. Therefore, no adjustment should be made on account of 29 September 2012 falling on a Saturday. The month's end of 29 September 2012 was on 30 September 2012. The fifth (5th) and tenth (10th) days following the same fell on 05 and 10 October 2012, respectively.

17. Furthermore, in Administrative Matter No. 00-2-14-SC, promulgated on 29 February 2000, the Honorable Supreme Court declared that:

> 'xxx xxx xxx
>
> Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration period;
>
> NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of 'the last day of the period' ***so that when a party seeks an extension and the same is granted, due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.***' (emphases and underscoring supplied)

18. Albeit the Honorable Supreme Court made the foregoing declaration in reference to motions for

extension, the reasoning used therein nonetheless applies squarely in this particular case.

19. The Honorable Supreme Court upheld this view in the case of *Jaime Beltran Luz v. National Amnesty Commission,* wherein it decided that:

> 'xxx xxx xxx
>
> ***The extension granted by the Court of Appeals should be tacked to the original period and commences immediately after the expiration of such period.*** Under the Resolution of this Court in A.M. No. 00-2-14-SC, the CA has no discretion to reckon the commencement of the extension it granted from a date later than the expiration of such period, regardless of the fact that said due date is a Saturday, Sunday or a legal holiday.
>
> xxx xxx xxx'

20. And in the case of *Bank of the Philippine Islands v. Court of Appeals*, the Honorable Supreme Court found occasion to apply this view to a temporary restraining order, to wit:

> 'xxx xxx xxx
>
> It is clear from the last sentence of this section that non-working days (Saturdays, Sundays and legal holidays) are excluded from the counting of the period only when the last day of the period falls on such days. ***The Rule does not provide for any other circumstance in which non-working days would affect the counting of a prescribed period.*** Hence, Judge Victorio exceeded the authority granted to lower courts, in Section 5, Rule 58 of the Rules of

> Court, when he excluded non-working days from the counting of the twenty-day period.
>
> In sum, private respondent was not entitled to the ***TRO nor to the preliminary injunction***, and the period granted in the TRO issued by Judge Victorio exceeded that prescribed in the Rules of Court.
>
> xxx xxx xxx' (emphases and underscoring supplied)

B. The law heavily presumes upon the favor of the propriety and exactness of tax assessments.

21. As it stands, there exists a presumption in favor of the propriety and exactness of the assessment against petitioner. The Honorable Supreme Court discussed this in the case of *Commissioner of Internal Revenue v. Bank of Philippine Islands,* to wit:

> 'xxx xxx xxx
>
> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.
>
> xxx xxx xxx'

22. Thus, it is upon petitioner to present evidence and establish the inaccuracy or outright invalidity of the assessment made against it. Corollarily, its failure to do

so further confirms the propriety and exactness of assessment."

Respondent filed a Motion for Summary Judgement with Manifestation[15] on January 29, 2014, arguing that there is no genuine issue as to any material fact. The Court denied respondent's motion in the Resolution[16] promulgated on April 22, 2014.

Thereafter, respondent filed her Pre-Trial Brief[17] on July 17, 2014; while petitioner filed its Pre-Trial Brief[18] through registered mail on August 4, 2014 and was received by the Court on August 12, 2014.

During the hearing held on September 25, 2014, both parties manifested that the instant case involves only questions of law and that they have no witnesses to present. As a consequence, the parties were granted twenty (20) days from the said date or until October 15, 2014 to file their Joint Stipulation of Facts and Issues.[19]

The parties filed their Joint Stipulation of Facts[20] on November 19, 2014, which was approved by the Court in the Resolution[21] dated November 28, 2014. The parties were likewise granted a period of thirty (30) days from receipt thereof to file their respective memorandum.

The case was submitted for decision on February 27, 2015,[22] considering respondent's Memorandum[23] filed on December 18, 2014 and petitioner's Memorandum[24] filed through registered mail on January 6, 2015 and received by the Court on January 14, 2015.

Hence, this Decision.

THE ISSUES

[15] Docket, pp. 83-88.
[16] Docket, pp. 98-102.
[17] Docket, pp. 110-113.
[18] Docket, pp. 116-122.
[19] Minutes of the Hearing, Docket, p. 127.
[20] Docket, pp. 139-142.
[21] Docket, p. 144.
[22] Resolution, Docket, p. 193.
[23] Docket, pp. 145-158.
[24] Docket, pp. 161-171.

The following are the issues[25] submitted by the parties for this Court's resolution:

1. Whether or not the applicable statutory period (expiration of redemption period) fell on September 29, 2012;

2. Whether or not petitioner is required to file the EWT Return and remit the tax on or before October 10, 2012 and to file the DST Return and pay the said tax on or before October 5, 2012;

3. Whether or not the imposition of the 25% surcharge, interest and penalty in the payment of capital gains tax and DST is lawful; and

4. Whether or not petitioner is entitled to a refund of the penalties, surcharges and interests it allegedly paid.

THE RULING

The Court shall now determine the propriety of petitioner's claims.

Petitioner asserts that the imposition of penalties, surcharges and interests is erroneous and unlawful because it timely paid the subject EWT and DST.

On the other hand, respondent argues that the Court has no jurisdiction to act on the instant claim for refund since petitioner based its claim on Section 228 of the NIRC of 1997, as amended. Accordingly, claims for refund of erroneously or illegally collected taxes must be brought under Section 229 of the NIRC of 1997, as amended, which provides for different requirements and periods.

Records reveal that the instant case is primarily anchored on Section 228 of the NIRC of 1997, as amended, *viz*:

> "SEC. 228. *Protesting of Assessment.* – When the Commissioner or his duly authorized representative finds

[25] Issues to be Tried or Resolved, JSF, Docket, p. 141.

that proper taxes should be assessed, he shall first notify the taxpayer of his findings: xxx xxx xxx

xxx xxx xxx

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In relation thereto, Section 7 of RA No. 9282, as amended, states:

"SEC. 7. *Jurisdiction.* – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

> (1) Decisions of the Commissioner of Internal Revenue in cases **involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases **involving disputed assessments**, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

From the foregoing, the administrative protest must be made within 30 days from the taxpayer's receipt of the deficiency tax assessment. Otherwise, the assessment becomes final, unappealable, and demandable. Consequently, this Court, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction,[26] *i.e.*, disputed assessments.

In the case *of Oceanic Wireless Network, Inc. v. Commissioner of Internal Revenue, The Court of Tax Appeals, and The Court of Appeals*[27], the Supreme Court held that:

> "The rule is that for the Court of Tax Appeals to acquire jurisdiction, **an assessment must first be disputed by the taxpayer and ruled upon by the Commissioner of Internal Revenue to warrant a decision from which a petition for review may be taken to the Court of Tax Appeals.** Where an adverse ruling has been rendered by the Commissioner of Internal Revenue with reference to a disputed assessment or a claim for refund or credit, the taxpayer may appeal the same within thirty (30) days after receipt thereof." *(Emphasis supplied)* gr

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[26] *Cathay Pacific Airways, Ltd. v. Commissioner of Internal Revenue,* CTA EB No. 717 (CTA Case No. 7876), April 17, 2012; *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue,* G.R. No. 168498, Resolution dated April 24, 2007.

[27] G.R. No. 148380, December 9, 2005.

In *Oceanic*, the Supreme Court declared that an assessment must first be disputed by the taxpayer and ruled upon by respondent to warrant a decision from which a petition for review may be taken to this Court.

Respondent contends that there is no disputed assessment to speak of since petitioner already paid the surcharge, interests and penalties for late payment of EWT and DST. Thus, there can be no inaction involving a disputed assessment over which this Court may exercise its appellate jurisdiction.[28]

In the instant case, petitioner filed a protest letter[29] against the One-Time Transaction Computation Sheet[30] (ONETT) issued by BIR Revenue Region No. 19, to protest the imposition of penalties, surcharges, and interests in the payment of EWT and DST.

The Court is now confronted with the question of whether the ONETT Computation Sheet is the assessment contemplated under Section 228 of the NIRC of 1997, as amended.

In the case of *Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al.*[31], the Supreme Court explained that "an assessment informs the taxpayer that he or she has tax liabilities. But not all documents coming from the BIR containing a computation of the tax liability can be deemed assessments". Likewise, an "assessment contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period".

The ONETT Computation Sheet states the computation of tax liabilities which a taxpayer is required to pay. However, it does not formally inform petitioner of its tax liabilities and there is no formal demand to pay the same. Without the formal demand for payment, petitioner has no way to determine the period within which to protest the tax liabilities made by respondent. After all, the issuance of an assessment is vital in determining the period of limitation regarding its proper issuance and the period within which to protest it.[32]

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[28] Respondent's Memorandum, Docket, p. 149.
[29] Annex "D", Petition for Review, Docket, pp. 30-32.
[30] Annex "B", Petition for Review, Docket, p. 27.
[31] G.R. No. 128315, June 29, 1999.
[32] *Commissioner of Internal Revenue v. PASCOR Realty and Development Corporation, et al., supra.*

Therefore, the ONETT Computation Sheet is not the assessment contemplated under Section 228 of the NIRC of 1997, as amended, that would require a protest from petitioner.

Consequently, the Court can only acquire jurisdiction over matters that are clearly granted by RA No. 9282, as amended, *i.e.*, decision or inaction of respondent over petitioner's disputed assessment pursuant to Section 228 of the NIRC of 1997, as amended.

Considering the foregoing, the instant Petition must fail for lack of jurisdiction of this Court.

With regard to petitioner's claim for refund or issuance of tax credit certificate, the Court also finds the same unmeritorious.

Petitioner argues that Section 2 of Revenue Regulations No. 09-2012 states that the capital gains tax should be filed and the tax remitted to the BIR within thirty (30) days from the expiration of the applicable statutory redemption period; or file the CWT Return and remit the said tax to the BIR within ten (10) days following the end of the month after the expiration of the prescribed statutory period. Further, the DST Return must be filed and the said tax must be paid to the BIR within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.[33]

Petitioner insists that the redemption period expired not on September 29, 2012, being a Saturday, but on October 1, 2012, the next working day. In other words, the payment period for CWT and DST should be until November 10, 2012 and November 5, 2012, respectively. Petitioner paid the taxes due, including the interests, penalties and surcharges on October 24, 2012. Petitioner posits that it is well within the period mandated by Revenue Regulations No. 09-2012. As such, the imposition of surcharges, penalties and interests has no legal basis.[34]

On the other hand, respondent avers that no administrative claim for refund was filed by petitioner contrary to the provision of

[33] Petitioner's Memorandum, Docket, p. 186.
[34] Petitioner's Memorandum, Docket, pp. 186-187.

Section 229 of the NIRC of 1997, as amended. Hence, the Court has no jurisdiction to act on the subject Petition.[35]

Section 229 of the NIRC of 1997, as amended, provides:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Based on the above-quoted provision, to be able to claim for refund under Section 229 of the NIRC of 1997, as amended, petitioner must first file an administrative claim before respondent. However, records reveal that petitioner did not file an administrative claim for refund. Without such administrative claim, this Court cannot entertain petitioner's refund claim.

WHEREFORE, in view thereof, the instant Petition filed by Land Bank of the Philippines is hereby **DISMISSED** for lack of jurisdiction. *ga*

[35] Respondent's Memorandum, Docket, pp. 150-151.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice